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ETHICS COUNCIL

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Kyiv

DECISION

No. 49

***On non-compliance of candidate
for the position of the member of the High Council of Justice
Inna Olehivna Kaluhina
with the professional ethics and integrity criteria
for filling in the position of the member of the High Council of Justice***

The Ethics Council consisting of Chair of the Ethics Council Lev Kyshakevych, Deputy Chair of the Ethics Council Sir Anthony Hooper, members of the Ethics Council: Robert Cordy, Volodymyr Siverin, Lavly Perling, Yurii Triasun, remotely by videoconference, having conducted evaluation of compliance of candidate for the position of the member of the High Council of Justice Inna Olehivna Kaluhina with the criteria of professional ethics and integrity, according to the Law of Ukraine “On the High Council of Justice”, the Rules of Procedure of the Ethics Council adopted by the Ethics Council’s Decisions No. 1 of 01.12.2021 and No. 4 of 09.12.2021, as amended by the Ethics Council’s Decision No. 4 of 26.04.2022, Methodology for assessing compliance of the candidate for the position of a member of the High Council of Justice and sitting members of the High Council of Justice with the criterion of professional ethics and integrity adopted by the Ethics Council’s Decision No. 5 of 09.12.2021 (“the Methodology”),

has established:

According to part 14 Article 9¹ of the Law of Ukraine “On the High Council of Justice” the Ethics Council selects candidates for the positions of the member of the High Council of Justice in two stages:

- 1) selection of candidates pursuant to results of consideration of documents submitted by candidates, results of the special check and respective information from open sources, and formation of the list of candidates admitted to the interview;
- 2) conduct of interviews with selected candidates and determination of the list of candidates recommended to bodies which elect (appoint) members of the High Council of Justice.

The Ethics Council received copies of documents of Inna Olehivna Kaluhina for participation in the competition for the position of the member of the High Council of Justice as nominated by the Congress of Judges of Ukraine and admitted her to the interview with its Decision No. 6 of 21.12.2021.

With Decree No. 129/2019 of the President of Ukraine of 11.04.2019 Inna Olehivna Kaluhina was appointed to the position of the Appellate Chamber of the High Anti-Corruption Court which she has held till now.

Having studied documents provided by Inna Olehivna Kaluhina for participating in the competition, her written explanations and documents provided upon the Ethics Council’s request, information obtained from open sources and from civil society organizations, information received from the National Agency for Corruption Prevention (“the NACP”) and the National Anti-Corruption Bureau of Ukraine (“the NABU”), having conducted the interview with her, the Ethics Council has reached the following conclusions.

1. With respect to sources of origin of savings of the candidate’s mother

In her asset declaration of the person authorized to fulfill functions of the state or local self-governance (hereinafter - declaration) as of 2017 the candidate specified that she received UAH 80,000 from her mother by means of re-registering two deposit accounts in the candidate’s name. In her asset declaration for 2017 the candidate declared that her mother, being her family member, had savings, yet she

did not specify their amount. The candidate explained that her mother did not want to specify the amount of savings in the open declaration out of personal safety considerations.

In her asset declaration for 2018 the candidate specified that her mother had savings in the amount of USD 20,000 and UAH 100,000. She also pointed out that these were the same funds the amount of which she did not specify in her asset declaration for 2017.

In her asset declaration for 2019 the candidate declared a loan in the amount of UAH 528,000 which she received from her mother. She did not indicate her mother as her family member in this declaration. The candidate pointed out that these funds in the amount of UAH 528,000 were the same funds which were specified in her asset declaration for 2018 as USD 20,000.

According to information from the State Register of Individual Taxpayers, the total income of the candidate's mother for the period from 1998 to 2021 amounted to UAH 22,815. The Ethics Council informed the candidate about that in its written questions and requested to provide documents which would confirm that her mother had sufficient funds to make a gift in the amount of UAH 80,000 in 2016 and to accumulate savings in 2018 in the amount of USD 20,000 (lent to the candidate in 2019) and UAH 100,000.

On the request of the Ethics Council with regard to the sources of origin of the savings the candidate informed, that this are the the joint funds of her mother and father, who died in 1999. At the same time, she did not provide any documents to prove the legality of sources of origin of these funds. The candidate's answer did not refute the Ethics Council's reasonable doubts about the legality of sources of origin of these funds.

Pursuant to cl. 1.3.7 of the Methodology, sources of origin of the candidate's property are legal, the candidate's level of life or that of his family members corresponds to their declared and legal incomes in case there are no reasonable doubts to the contrary.

Pursuant to cl. 1.3.7.3 of the Methodology, income that has not been declared with public authorities in line with requirements of the legislation or that has been declared, yet with respect to which there are reasonable doubts that it has been, in particular, a tool or result of legal or declared activity, shall not be considered as legal.

Cl. 1.3.7.4 of the Methodology sets out that if a candidate has received property free-of-charge into ownership, possession, or use, its previous owner (and current owner in case of transferring property into ownership or use) who has provided such property shall do that from legal income.

Since the candidate did not provide confirmation of the legality of origin of all cash funds gifted to her in 2016 and borrowed to her in 2019, as well as her mother's savings in the amount of UAH 100,000, the Ethics Council has reasonable doubts about legality of sources of origin of her mother's funds (cl. 1.3.7 of the Methodology).

2. With respect to indication of inaccurate and incomplete information in her asset declarations for 2020

Note No. 458/21 of the National Agency on Corruption Prevention as of 19.08.2021 on results of a complete check of the declaration of the person authorized to fulfill functions of the state or local self-governance for 2020 has revealed that in her declaration the candidate:

1) she provided inaccurate information about the address of a residential house owned by her mother;

2) she did not indicate information about the land plot with the area of 735 sq. m. belonging to her mother under the right of use;

3) she did not indicate information about the value of the land plot owned by the mother;

4) she indicated inaccurate information about the registration number of the apartment owned by her mother;

5) she indicated inaccurate information about the date on which my mother acquired the right for the residential house;

6) she indicated inaccurate information about the area of the apartment belonging to her under the right of use;

7) she indicated inaccurate information about the date of acquisition of the right of ownership and registration number of the apartment owned by her mother;

8) she indicated inaccurate information about types of real estate objects belonging to her mother under the right of ownership;

9) she did not indicate information about her mother's right of ownership for vehicle HAZ 24 manufactured in 1984;

10) she did not indicate information about receipt of a subsidy in the monetary form in the amount of UAH 10,323.66 by the mother;

11) she did not indicate information about her mother's bank accounts opened in financial institutions.

In her written and oral answers the candidate explained that:

1) inaccurate information about the address of the residential house is a technical error, but she specified a correct number of this house in the declarations for other years;

2) she did not specify information about the land plot with the area of 735 sq. m. as her mother did not have title documents for this land plot even though the decision of the city council about the transfer of this land plot to her mother was adopted back on 12.08.2019;

3) value of the land plot was mistakenly informed by her mother to the candidate;

4) she does not agree with the fact that she indicated inaccurate information about the registration number of the apartment belonging to her mother as she did not specify this information at all since as of the moment of filling in the declaration she did not have title documents. The candidate believes that she did not violation the rules of declaring as the declaration offers a technical possibility not to specify the registration number. At the same time, the candidate did not request information

from the State Register of Property Rights on Real Estate even though she had such opportunity;

5) she specified the date of the court decision on recognition of the right of ownership for the house and not the date of state registration of the right of ownership;

6) the NACP's explanations allow rounding up figures, she specified the area of the service apartment from her memory and she made a mistake only by 0.4 sq. m. During the interview the candidate agreed that the NACP's explanations allow rounding up values, while area of real estate objects should not be rounded up. The candidate also pointed out that she had an agreement on the use of the apartment and order for the service apartment which specified accurate area of the apartment. The candidate did not explain why she did not use information from these documents while filling in the declaration;

7) she specified the date of the sale and purchase agreement conclusion as the date of acquisition of the right of ownership for the apartment belonging to her mother since the candidate did not have information about the date of registration of the right of ownership;

8) she did not specify the area of two garages because it is not specified in any document;

9) she did not specify information about vehicle HAZ 24 manufactured in 1984 as this vehicle was actually not used by her family members, and according to her mother this vehicle was sold back at the beginning of the 2000s. At the same time, the candidate agreed that her mother was the owner of this vehicle and it was an obligation of the candidate to declare it;

10) the candidate did not specify information about subsidies because she was filling in the information about the statement on her mother's income which did not specify this information. In fact, the candidate's mother did not receive funds in cash or cashless, these funds had a purpose and were a discount for utilities;

11) she did not specify information about her mother's bank accounts because her mother did not have such accounts.

Thus, the candidate accepted that she mistakenly specified a wrong address of the residential house in Melitopol; mistakenly did not specify information about the land plot with the area of 735 sq. m.; consciously did not specify information about registration number of the apartment even though she could have received this information in case of sending a request to the State Register of Property Rights; mistakenly specified wrong area of the apartment belonging to her under the right of use even though she had the agreement on the use of the apartment and order for service apartment; mistakenly did not specify information about vehicle HAZ 24 manufactured in 1984 belonging to her mother under the right of ownership.

The candidate explained that such number of mistakes was related to the fact that in 2019 she was appointed to the position of the judge of the Appellate Chamber of the Higher Administrative Court of Ukraine, moved from Melitopol to Kyiv and was forced to fill in the declaration anew. As of the moment of filling in the declaration for 2020 the majority of title documents for real estate property owned and used by the candidate and her mother remained in Melitopol. Besides, the candidate believes that if the declaration offers a possibility to choose mark “unknown”, “family member did not provide information”, selection of such marks is not a mistake. In the candidate’s opinion, she specified all the information which allows identifying real estate objects. The candidate explained that she did not think that she provided inaccurate information while filling in the declaration as she provided enough information about property which allowed identifying such property.

According to para. 2 of Article 60(1) of the Law of Ukraine “On Prevention of Corruption”, it is prohibited for persons specified in para. 1, 2 of Article 3(1) of this Law (and to judges as well) to provide untimely, inaccurate, or incomplete information which shall be provided pursuant to the law.

Pursuant to clause 6 of the NACP’s Explanations No. 3 of 11.08.2016 regarding application of separate provisions of the Law of Ukraine “On Prevention of Corruption” with respect to financial control measures in the version of 08.02.2019, in case a family member has not provided information which shall be indicated in

the declaration, yet this information may be received by a person submitting the declaration from official sources (for instance, title documents, respective state registers), the person submitting the declaration shall specify all known information in the declaration. Only if the family member does not know such information and it may not be received from official sources (for instance, title documents, respective state registers), the person shall choose mark “Unknown” in the declaration.

Thus, the candidate should have chosen mark “Unknown” only in case there were no title documents and information in the state registers. During the interview the candidate admitted that she could have requested this information from the State Register of Property Rights for Immovable Property, yet she did not do that.

According to cl. 1.3.7.6. of the Methodology, the candidate shall comply with applicable requirements of financial control, in particular, provide full and accurate information in asset declarations.

According to cl. 1.3.4.1 of the Methodology, the candidate fails to comply with the indicator of diligence, in case there are reasonable doubts that such candidate in the present or past professional capacity has acted in line with requirements of the legislation, professional ethical rules, other ethical norms regarding diligence.

Cl. 1.4 of the Methodology sets out that while determining compliance with the criterion of professional ethics and integrity, the Ethics Council takes into consideration significance of any violation of ethics and integrity.

Taking into account a large number of mistakes made by the candidate while filling in the asset declaration for 2020 and her lack of diligence in the process of its filling in, the Ethics Council considers violations of declaration rules to be significant.

Hence, since the candidate did not provide accurate and complete information in her declaration for 2020, the Ethics Council has reasonable doubts about her compliance with the such criteria of professional ethics and integrity as diligence (cl. 1.3.4.1 of the Methodology) and with the criteria of the compliance with the requirements of financial control (cl. 1.3.7.6 of the Methodology).

Thus, the Ethics Council has reasonable doubts about the compliance of the candidate with the criterias of professional ethics and integrity, in particular with regard to legality of sources of origin of the funds of the members of candidate's family, with the criteria of diligence and criteria of compliance with the requirements of financial control.

In view of the abovementioned reasonable doubts, considered both cumulatively and separately, being governed by Rules 2.3, 3.1, 3.2, 3.16.2 of the Ethics Council's Rules of Procedure, Methodology, Article 9¹ of the Law of Ukraine "On the High Council of Justice", Final and Transitional Provisions of the Law of Ukraine "On Introducing Amendments into Some Legislative Bills of Ukraine Regarding the Procedure of Election (Appointment) to Positions of Members of the High Council of Justice and Activities of Disciplinary Inspectors of the High Council of Justice", the Ethics Council

has decided

to recognize candidate for the position of the member of the High Council of Justice Inna Olehivna Kaluhina as non-compliant with the professional ethics and integrity criteria for filling in the position of the member of the High Council of Justice.

Chair

Lev Kyshakevych